

IC 29-1-19

Chapter 19. Department of Veterans Affairs

IC 29-1-19-1

Definitions

Sec. 1. As used in this chapter:

"Person" means an individual, a partnership, a limited liability company, a corporation, or an association.

"Department" refers to the United States Department of Veterans Affairs.

"Income" means money received from the Department and revenue or profit from any property wholly or partially acquired therewith.

"Estate" means income on hand and assets acquired partially or wholly with "income".

"Benefits" means all money paid or payable by the United States through the department.

"Protected person" means a beneficiary of the department.

"Guardian" means any fiduciary for the person or estate of a protected person or a person designated by a protective order issued under IC 29-3 to act on behalf of a protected person.

"Secretary" refers to the secretary of the department.

(Formerly: Acts 1953, c.112, s.2001.) As amended by Acts 1982, P.L.171, SEC.63; P.L.33-1989, SEC.41; P.L.1-1990, SEC.267; P.L.8-1993, SEC.460.

IC 29-1-19-2

Party in interest; notice of hearing

Sec. 2. The Secretary shall be a party in interest in any proceeding:

- (1) for the appointment or removal of a guardian;
- (2) for the recognition that an individual is no longer a minor or an incapacitated person (as defined in IC 29-3-1-7.5); and
- (3) affecting in any manner the administration by the guardian of the estate of any present or former protected person whose estate includes assets derived in whole or in part from benefits paid at any time by the Department.

Not less than fifteen (15) days before the hearing on the matter, notice in writing of the time and place of the hearing shall be given by mail (unless waived in writing) to the office of the Department having jurisdiction over the area in which the suit or proceeding is pending.

(Formerly: Acts 1953, c.112, s.2002.) As amended by P.L.33-1989, SEC.42.

IC 29-1-19-3

Appointment of guardian

Sec. 3. Whenever, pursuant to any law of the United States or regulation of the department, it is necessary, prior to payment of benefits, that a guardian be appointed, the appointment may be made

in the manner provided in this chapter.
(Formerly: Acts 1953, c.112, s.2003.) As amended by P.L.1-1990,
SEC.268.

IC 29-1-19-4 Repealed

(Repealed by Acts 1971, P.L.412, SEC.1.)

IC 29-1-19-5

Petition for appointment

Sec. 5. (a) A petition for the appointment of a guardian may be filed by any relative or friend of the incapacitated person or minor or by any person who is authorized by law to file such a petition. If there is no person authorized to file or if the person authorized to file refuses or fails to file a petition within thirty (30) days after mailing of notice by the Department to the last known address of the person, if any, indicating the necessity for the filing of a petition, a petition for appointment may be filed by any resident of Indiana.

(b) The petition for appointment shall set forth the name, age, place of residence of the protected person, the name and place of residence of the nearest relative, if known, and the fact that the protected person is entitled to receive benefits payable by or through the Department and shall set forth the amount of money then due and the amount of probable future payments.

(c) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the protected person and the name, age, relationship, if any, occupation, and address of the proposed guardian, and, if the nominee is a natural person, the number of protected persons for whom the nominee is presently acting as guardian. Notwithstanding any law as to priority of persons entitled to appointment, or the nomination in the petition, the court may appoint some other individual or a bank or trust company as guardian, if the court determines it is for the best interest of the protected person.

(d) In the case of an incapacitated person the petition shall show that the person has been rated incapacitated by the Department on examination in accordance with the laws and regulations governing the Department.

(Formerly: Acts 1953, c.112, s.2005.) As amended by P.L.33-1989,
SEC.43.

IC 29-1-19-6

Appointment of guardian; condition precedent to payment of veterans' benefits; minor ward

Sec. 6. Where a petition is filed for the appointment of a guardian for a minor, a certificate of the secretary or the secretary's authorized representative, setting forth the age of such minor as shown by the records of the department and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the department shall be prima facie evidence of the necessity for such appointment.

(Formerly: Acts 1953, c.112, s.2006.) As amended by P.L.1-1990, SEC.269.

IC 29-1-19-7

Appointment of guardian; condition precedent to payment of veterans' benefits; incapacitated person

Sec. 7. Where a petition is filed for the appointment of a guardian for an incapacitated person, a certificate of the administrator or the administrator's duly authorized representative that the person has been rated incompetent or incapacitated by the Department on examination in accordance with the laws and regulations governing the Department and that the appointment of a guardian or the issuance of a protective order is a condition precedent to the payment of money due the protected person by the Department shall be prima facie evidence of the necessity for the appointment.

(Formerly: Acts 1953, c.112, s.2007.) As amended by P.L.33-1989, SEC.44.

IC 29-1-19-8

Filing petitions; notice

Sec. 8. Upon the filing of a petition for the appointment of a guardian or the issuance of a protective order under this article, notice shall be given to the incapacitated person, and to other persons, in the manner provided by IC 29-3-6, and also to the Department as provided by this chapter.

(Formerly: Acts 1953, c.112, s.2008.) As amended by Acts 1982, P.L.171, SEC.64; P.L.33-1989, SEC.45.

IC 29-1-19-9

Bond of guardian

Sec. 9. (a) Upon appointment, a guardian shall execute and file bond to be approved by the court in an amount not less than the estimated value of the personal estate and anticipated income of the protected person during the ensuing year. The bond shall be in the form and be conditioned as required of guardians appointed under IC 29-3-7. The court may from time to time require the guardian to file an additional bond. Any bank or trust company organized under the laws of the state, or of the United States of America, and operating a bank or trust company, which is located within Indiana, which is now acting, or which may act as a guardian under this chapter, is exempt from furnishing the bond required in this subsection to the same extent and in the same manner as a bank or trust company, when acting in a fiduciary capacity, is relieved from filing a bond under the provisions of IC 28-2-7.

(b) Where a bond is tendered by a guardian with personal sureties, there shall be at least one (1) or more surety or sureties and the guardian or sureties shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and shall state that each is worth the sum named in the bond as the penalty thereof over and above all the guardian's debts and liabilities

and the aggregate of other bonds on which the guardian is principal or surety and exclusive of property exempt from execution. The court may require additional security or may require a corporate surety bond, the premium thereon to be paid from the ward's estate.

(Formerly: Acts 1953, c.112, s.2009; Acts 1961, c.93, s.1; Acts 1971, P.L.413, SEC.1.) As amended by Acts 1982, P.L.171, SEC.65; P.L.33-1989, SEC.46.

IC 29-1-19-10

Accounting by guardian; notice; hearing

Sec. 10. (a) Every guardian who has received or shall receive money or other things of value from the Department shall file with the court biennially within thirty (30) days following the anniversary date of the appointment, in addition to other accounts as required by the court, a full, true, and accurate account under oath of all money or other things of value received by the guardian, all earnings, interest, or profits derived from the estate, all property acquired with the estate and of all disbursements from the estate, and showing the balance at the date of the account and how it was invested.

(b) The guardian, at the time of filing any account, shall exhibit all securities or investments held by the guardian to an officer of the bank or other depository wherein the securities or investments are held for safekeeping or to an authorized representative of the corporation which is surety on the guardian's bond, or to the judge or clerk of a court in this state, or, upon request of the guardian or other interested party, to any other reputable person designated by the court, who shall certify in writing that the person has examined the securities or investments and identified them with those described in the account, and shall note any omissions or discrepancies. If the depository is the guardian, the certifying officer shall not be the officer verifying the account. The guardian may exhibit the securities or investments to the judge of the court, who shall endorse on the account and the copy of the account a certificate that the securities or investments shown as held by the guardian were each in fact exhibited to the judge and that those exhibited were the same as those shown in the account, and noting any omission or discrepancy. That certificate and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable, showing the amount on deposit, shall be prepared and signed in duplicate, and one (1) of each shall be filed by the guardian with the account.

(c) At the time of filing in the court any account, a certified copy of the account and a signed duplicate of each certificate filed with the court shall be sent by the guardian to the office of the Department having jurisdiction over the area in which the court is located. A signed duplicate or a certified copy of a petition, motion, or other pleading, pertaining to an account, or to any matter other than an account, and which is filed in the guardianship proceedings or in any proceeding for the recognition that an individual is no longer a minor or an incapacitated person shall be furnished by the person filing the

petition, motion, or pleading to the proper office of the Department. Unless hearing is waived in writing by the attorney of the Department, and by all other persons entitled to notice, the court shall fix a time and place for the hearing on the account, petition, motion, or other pleading not less than fifteen (15) days nor more than thirty (30) days from the date filed, unless a different available date is stipulated in writing. Unless waived in writing, written notice of the time and place of hearing shall be given the Department office concerned, the guardian, and any others entitled to notice not less than fifteen (15) days prior to the date fixed for the hearing. The notice may be given by mail, in which event it shall be deposited in the mail not less than fifteen (15) days prior to the date specified. The court, or clerk of the court, shall mail to the Department office a copy of each order entered in any guardianship proceeding in which the administrator is an interested party.

(d) If the guardian is accountable for property derived from sources other than the Department, the guardian shall be accountable as required under the applicable law of this state pertaining to the property of minors or incapacitated persons who are not beneficiaries of the Department, and the guardian is entitled to the compensation provided by law for administering the other property. The account for other property may be combined with the account filed in accordance with this section.

(Formerly: Acts 1953, c.112, s.2010; Acts 1971, P.L.413, SEC.2.) As amended by P.L.33-1989, SEC.47.

IC 29-1-19-11

Removal of guardian

Sec. 11. If any guardian shall fail to file with the court any account as required by this article or by an order of the court when any account is due or within thirty (30) days after citation issues as provided by law, or shall fail to furnish the department a true copy of any account, petition, or pleading as required by this article, such failure may in the discretion of the court be ground for removal.

(Formerly: Acts 1953, c.112, s.2011.) As amended by Acts 1982, P.L.171, SEC.66; P.L.1-1990, SEC.270.

IC 29-1-19-12

Compensation of guardian; liquidation of loans or investments

Sec. 12. (a) Compensation payable to guardians shall:

- (1) be based upon services rendered; and
- (2) not exceed either five percent (5%) of the amount of moneys received or such larger amount as may be established by the court during the period covered by the account.

(b) In the event of extraordinary services by any guardian, the court, upon petition and hearing thereon, may authorize reasonable additional compensation for the services. A copy of the petition and notice of hearing on the petition shall be given the proper office of the department in the manner provided in the case of hearing on a guardian's account or other pleading.

(c) No commission or compensation shall be allowed on the moneys or other assets received from a prior guardian nor upon the amount received from liquidation of loans or other investments. *(Formerly: Acts 1953, c.112, s.2012; Acts 1971, P.L.413, SEC.3.) As amended by P.L.1-1990, SEC.271.*

IC 29-1-19-13

Investment of funds

Sec. 13. Every guardian shall invest the surplus funds of the estate of the protected person, in which investment the guardian has no interest, and only as provided in this section:

(1) In bonds or notes constituting the direct and general obligations of the United States, or of a state that has not at any time during the ten (10) years next preceding the date of the investment defaulted in payment of the principal or interest on any bonds or notes by it issued, or in bonds, the payment of which, both principal and interest, is guaranteed by the United States.

(2) In bonds or notes that are the direct and general legal obligations of a county, city, or town in this state, and which also at the date of the investment has the power to levy general taxes sufficient for the payment of principal and interest on the obligations, if the issuer of the obligation has not defaulted in payment of principal or interest due upon any of its bonds or notes at any time during the ten (10) years next preceding the date of the investment.

(3) After prior order of the court, upon application, in the legally issued notes or bonds of the owner of improved unencumbered real property in this state, secured by first mortgage or deed of trust. The total debt secured by the encumbrance may not exceed fifty percent (50%) of the cash market value of the real property at the time of the investment, and, if buildings or other improvements constitute a material part of the value of the premises encumbered to secure the indebtedness, they shall be kept insured against loss or damage by fire, in a reasonable amount for the benefit of the owners of the notes or bonds. Before making any investment, a signed application shall be procured from the borrower, that shall contain the information required by the lender, and that shall contain a complete description of the real estate, including improvements and an affirmative statement that the proposed borrower is the owner of the entire fee simple title to the real estate and improvements, that they are free of every encumbrance or lien of any character, or if not, a statement of any existing encumbrance or other liens, and specific authorization to the lender to withhold from the proposed loan the necessary sum to discharge and procure the release of any encumbrances or other liens. The release shall be procured and filed for record prior to or contemporaneously with the making of the loan. The proposed borrower shall also furnish with the

application an abstract or certificate of title, which shall be completed to the time of closing the loan. The guardian proposing to make a loan or purchase any notes or bonds shall exhibit to the court with the application for approval the opinion of a qualified attorney at law, satisfactory to the court, which opinion shall show that the attorney has examined the title or certificate of title and that it is the opinion of the attorney that the proposed borrower has good title to the property to be encumbered, and that the proposed encumbrance will constitute a first lien on the property. In addition, the guardian shall file with the court satisfactory written evidence that the cash market value of the property to be encumbered is in accordance with the requirements of this subsection. If the guardian purchases notes or bonds previously issued, the attorney's examination and opinion shall also disclose whether the proposed transferor has and will pass to the guardian good title together with the liens securing the notes or bonds. Except loans insured by the federal housing administrator, the guardian is not authorized to loan or invest money upon the security of a real estate mortgage or trust deed which secures any principal indebtedness other than to the protected person's estate, and in the case of a minor the maturity of any indebtedness to the minor secured by real estate mortgage or trust deed shall not be later than the date on which the minor will attain the age of majority. Any investment made by a guardian in any of the securities enumerated shall not be transferred, liquidated, or disposed of, except upon petition filed for that purpose and an order of court obtained.

(4) In shares of a federal savings and loan association organized under the Home Owners' Loan Act of 1933, (12 U.S.C. 1461 through 1468), as in effect on December 31, 1990, or any building or savings and loan association whose principal place of business is located in Indiana whose accounts are insured by the Federal Deposit Insurance Corporation as provided in 12 U.S.C. 1811 through 1833e, as in effect on December 31, 1990. No shares may be purchased in excess of the amount of insurance protection afforded a member or investor of any such institution.

(5) In savings deposits in any bank whose principal place of business is located in Indiana.

(Formerly: Acts 1953, c.112, s.2013; Acts 1957, c.223, s.1.) As amended by Acts 1982, P.L.1, SEC.53; P.L.33-1989, SEC.48; P.L.8-1991, SEC.32.

IC 29-1-19-14

Support; maintenance; education

Sec. 14. (a) A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person other than the protected person, the spouse, and the children under the age of eighteen (18) years of the protected person, except upon petition to and prior order of the court after a hearing. A signed duplicate or

certified copy of the petition shall be furnished the proper office of the Department and notice of hearing shall be given the office as provided in the case of hearing on a guardian's account or other pleading.

(b) If the protected person is a child under the age of eighteen (18) years, and the parents or those standing in loco parentis are able to care for, maintain, and educate the protected person, neither the income nor the principal shall be expended for any purpose except as ordered by the court.

(Formerly: Acts 1953, c.112, s.2014; Acts 1973, P.L.287, SEC.11.) As amended by P.L.33-1989, SEC.49.

IC 29-1-19-15

Real estate acquisition

Sec. 15. (a) The court may authorize the purchase of the entire fee simple title to real estate in Indiana in which the guardian has no interest, but only as a home for the ward, or to protect the ward's interest, or (if the ward is not a minor) as a home for the ward's dependent family.

(b) Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A copy of the petition shall be furnished the proper office of the department and notice of hearing on the petition shall be given the office as provided in the case of hearing on a guardian's account.

(c) Before authorizing such investment the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name.

(d) This section does not limit the right of the guardian:

(1) on behalf of the ward to bid and to become the purchaser of real estate at a sale of the real estate pursuant to decree of foreclosure of lien held by or for the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; or

(2) if such be necessary to protect the ward's interest and upon prior order of the court in which the guardianship is pending, to agree with co-tenants of the ward for a partition in kind, or to purchase from co-tenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty.

(Formerly: Acts 1953, c.112, s.2015.) As amended by P.L.1-1990, SEC.272.

IC 29-1-19-16

Copies of records; determining eligibility

Sec. 16. When a copy of any public record is required by the department to be used in determining the eligibility of any person to participate in benefits made available by the department, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on the applicant's

behalf or the authorized representative of the department with a certified copy of such record.

(Formerly: Acts 1953, c.112, s.2016.) As amended by P.L.1-1990, SEC.273.

IC 29-1-19-17

Discharge of guardian

Sec. 17. In addition to any other provisions of law relating to judicial restoration and discharge of guardian, a certificate by the Department showing that a minor has attained majority or that the incapacitated person has been rated competent by the Department upon examination in accordance with law shall be prima facie evidence that the minor has attained majority, or the incapacitated person has recovered competency. Upon hearing after notice as provided in this chapter and the determination by the court that the minor has attained majority or the incapacitated person has recovered competency, an order shall be entered to that effect, and the guardian shall file a final account within sixty (60) days of such determination. Upon hearing after notice to the former protected person and to the Department as in case of other accounts, upon approval of the final account, and upon delivery to the protected person of the assets due from the guardian, the guardian shall be discharged and the guardian's sureties released.

(Formerly: Acts 1953, c.112, s.2017; Acts 1971, P.L.413, SEC.4.) As amended by P.L.33-1989, SEC.50.

IC 29-1-19-18

Application of certain provisions of chapter

Sec. 18. The provisions of this chapter relating to surety bonds and the administration of estates of protected persons shall apply to all income and estate as defined in section 1 of this chapter whether the guardian has been appointed under this chapter or under any other law of this state, special or general, prior or subsequent to January 1, 1954.

(Formerly: Acts 1953, c.112, s.2018.) As amended by Acts 1982, P.L.171, SEC.67; P.L.33-1989, SEC.51.